IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 126 of 2001
(Old No. 950/1991)

M/s Kisan Sahkari Chini Mills
Nadehi Jaspur (Kashipur) …….Applicant/Revisionist

Vs.

Commissioner of Sales Tax
U.P. Lucknow. ……Opposite party

Shri Piyush Garg, learned counsel for the revisionist.
Shri Sayeed Nadem, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the revisionist and learned Standing Counsel. The revision has been moved under Section 11 (1) of U.P. Sales Tax Act, 1948, and is directed against the judgment and order dated 25.05.1991, passed by Sales Tax Tribunal, Haldwani. This revision was filed way back in the year 1991 and is received by transfer from Allahabad High Court, under Section 35 of U.P. Reorganisation Act, 2000.

The only question of law involved in this revision is:-

"Whether on the facts and in the circumstances of the case the Sales Tax Tribunal was legally justified to hold that there was no sale of Gunny bags used in the packing of sugar?"

The assessment pertains to the year 1983-84, for which year the tax on sugar was exempted under Section 4 of U.P. Sales tax Act, 1948. The sugar is always sold in gunny bags and it is packed in gunny bags before it is stored for sale. The assessee is the manufacturer of sugar and was not supposed to sell it in loose without any packing.

Merely, on the basis of the fact that the sugar was sold in gunny bags by the manufacturer, it cannot be said that the assessee has sold the gunny bags. There is nothing on the record to establish that there was any direct agreement between the assessee and the purchaser of sugar for sale of gunny bags for the specific amount as consideration. Since no price was paid for the gunny bags, there cannot be said to be sale of gunny bags, as it does not come within the definition of sale, as given in Section 2 (h) of the U.P. Sales Tax Act, 1948.

Therefore, in view of the above discussions, the revision is allowed.

(Prafulla C. Pant, J.)

Dt: 30.07.2005
Sweta